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QM31/1228

EXAMINER	
LEWIS, W	
ART UNIT	PAPER NUMBER
3731	3

DATE MAILED:

12/28/98

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

# Office Action Summary

Application No.  
**08/137,335**

Applicant(s)  
**Davison et al.**

Examiner  
**William Lewis**

Group Art Unit  
**3731**



☒ Responsive to communication(s) filed on Aug 20, 1998

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-22 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1, 2, 4-8, 10-12, 14, 17, 18, and 20-22 is/are rejected.

☒ Claim(s) 3, 9, 13, 15, 16, and 19 is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

**WILLIAM LEWIS**  
**PATENT EXAMINER**  
**GROUP 3300**

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 5, 8, 10-12, 14 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Bonutti (US Patent 5,163,949). Bonutti discloses a device (10) comprising a tube structure with an expandable portion (94).

3. Claims 1, 2, 4-8, 10, 11, 14, 17, 18, 21 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Bonutti (US Patent 5,197,971). Bonutti discloses a device (10) comprising a tube (14) with an expanding portion (60).

### ***Allowable Subject Matter***

4. Claims 3, 9, 13, 15, 16 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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*Conclusion*

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to W. Lewis whose telephone number is (703) 308-0060.

  
WILLIAM LEWIS  
PATENT EXAMINER  
GROUP 3300

WL

December 21, 1998